

1                   **CRIMINAL HOMICIDE AND ABORTION REVISIONS**

2                                   2010 GENERAL SESSION

3                                   STATE OF UTAH

4                                   **Chief Sponsor: Carl Wimmer**

5                                   Senate Sponsor: Margaret Dayton

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7 **LONG TITLE**

8 **General Description:**

9                   This bill amends provisions of the Utah Criminal Code to describe the difference  
10 between abortion and criminal homicide of an unborn child and to remove prohibitions  
11 against prosecution of a woman for killing an unborn child or committing criminal  
12 homicide of an unborn child.

13 **Highlighted Provisions:**

14                   This bill:

- 15                   ▶ provides that, for aggravated murder, the aggravating factor of the victim being  
16 under the age of 14 years does not apply to the homicide of an unborn child;
- 17                   ▶ provides that a person is not guilty of criminal homicide of an unborn child if the  
18 sole reason for the death of the unborn child is that the person refused to consent to  
19 medical treatment or a cesarean section or failed to follow medical advice;
- 20                   ▶ provides that a woman is not guilty of criminal homicide of her own unborn child if  
21 the death of her unborn child:
- 22                   • is caused by a criminally negligent or reckless act of the woman; and
  - 23                   • is not caused by an intentional or knowing act of the woman;
- 24                   ▶ defines terms, including amending the definition of abortion to relate only to a  
25 medical procedure carried out by a physician, or through a substance used under the  
26 direction of a physician, with the consent of the woman on whom the abortion is  
27 performed;



- 28           ▶ describes the difference between abortion and criminal homicide of an unborn child;
- 29           ▶ removes prohibitions against prosecution of a woman for killing an unborn child or
- 30 committing criminal homicide of an unborn child;
- 31           ▶ clarifies that a woman is not criminally liable for seeking to obtain, or obtaining, an
- 32 abortion that is permitted by law; and
- 33           ▶ makes technical changes.

34 **Monies Appropriated in this Bill:**

35           None

36 **Other Special Clauses:**

37           This bill provides an immediate effective date.

38           This bill coordinates with H.B. 12, Criminal Homicide and Abortion Amendments, by  
39 providing superseding amendments.

40 **Utah Code Sections Affected:**

41 AMENDS:

- 42           **76-5-201**, as last amended by Laws of Utah 2002, Chapter 327
- 43           **76-5-202**, as last amended by Laws of Utah 2009, Chapters 157 and 206
- 44           **76-7-301**, as last amended by Laws of Utah 2004, Chapters 90 and 272
- 45           **76-7-302**, as last amended by Laws of Utah 2009, Chapter 38
- 46           **76-7-314**, as last amended by Laws of Utah 2009, Chapter 38
- 47           **76-7-314.5**, as enacted by Laws of Utah 2009, Chapter 38
- 48           **76-7-327**, as enacted by Laws of Utah 2004, Chapter 272

49 ENACTS:

50           **76-7-301.5**, Utah Code Annotated 1953

51 REPEALS:

52           **76-7-329**, as enacted by Laws of Utah 2004, Chapter 272

53 **Utah Code Sections Affected by Coordination Clause:**

54           The sections contained in H.B. 12, Criminal Homicide and Abortion Amendments.



56 *Be it enacted by the Legislature of the state of Utah:*

57           Section 1. Section **76-5-201** is amended to read:

58           **76-5-201. Criminal homicide -- Elements -- Designations of offenses.**

59 (1) (a) [~~A~~] Except as provided in Subsections (3) and (4), a person commits criminal  
60 homicide if ~~he~~ the person intentionally, knowingly, recklessly, with criminal negligence, or  
61 acting with a mental state otherwise specified in the statute defining the offense, causes the  
62 death of another human being, including an unborn child at any stage of its development.

63 (b) There shall be no cause of action for criminal homicide for the death of an unborn  
64 child caused by an abortion, as defined in Section 76-7-301.

65 (2) Criminal homicide is aggravated murder, murder, manslaughter, child abuse  
66 homicide, homicide by assault, negligent homicide, or automobile homicide.

67 (3) A person is not guilty of criminal homicide of an unborn child if the sole reason for  
68 the death of the unborn child is that the person:

69 (a) refused to consent to:

70 (i) medical treatment; or

71 (ii) a cesarean section; or

72 (b) failed to follow medical advice.

73 (4) A woman is not guilty of criminal homicide of her own unborn child if the death of  
74 her unborn child:

75 (a) is caused by a criminally negligent act or reckless act of the woman; and

76 (b) is not caused by an intentional or knowing act of the woman.

77 Section 2. Section **76-5-202** is amended to read:

78 **76-5-202. Aggravated murder.**

79 (1) Criminal homicide constitutes aggravated murder if the actor intentionally or  
80 knowingly causes the death of another under any of the following circumstances:

81 (a) the homicide was committed by a person who is confined in a jail or other  
82 correctional institution;

83 (b) the homicide was committed incident to one act, scheme, course of conduct, or  
84 criminal episode during which two or more persons were killed, or during which the actor  
85 attempted to kill one or more persons in addition to the victim who was killed;

86 (c) the actor knowingly created a great risk of death to a person other than the victim  
87 and the actor;

88 (d) the homicide was committed incident to an act, scheme, course of conduct, or  
89 criminal episode during which the actor committed or attempted to commit aggravated robbery,

90 robbery, rape, rape of a child, object rape, object rape of a child, forcible sodomy, sodomy upon  
91 a child, forcible sexual abuse, sexual abuse of a child, aggravated sexual abuse of a child, child  
92 abuse as defined in Subsection 76-5-109(2)(a), or aggravated sexual assault, aggravated arson,  
93 arson, aggravated burglary, burglary, aggravated kidnapping, or kidnapping, or child  
94 kidnapping;

95 (e) the homicide was committed incident to one act, scheme, course of conduct, or  
96 criminal episode during which the actor committed the crime of abuse or desecration of a dead  
97 human body as defined in Subsection 76-9-704(2)(e);

98 (f) the homicide was committed for the purpose of avoiding or preventing an arrest of  
99 the defendant or another by a peace officer acting under color of legal authority or for the  
100 purpose of effecting the defendant's or another's escape from lawful custody;

101 (g) the homicide was committed for pecuniary gain;

102 (h) the defendant committed, or engaged or employed another person to commit the  
103 homicide pursuant to an agreement or contract for remuneration or the promise of remuneration  
104 for commission of the homicide;

105 (i) the actor previously committed or was convicted of:

106 (i) aggravated murder under this section;

107 (ii) attempted aggravated murder under this section;

108 (iii) murder, Section 76-5-203;

109 (iv) attempted murder, Section 76-5-203; or

110 (v) an offense committed in another jurisdiction which if committed in this state would  
111 be a violation of a crime listed in this Subsection (1)(i);

112 (j) the actor was previously convicted of:

113 (i) aggravated assault, Subsection 76-5-103(2);

114 (ii) mayhem, Section 76-5-105;

115 (iii) kidnapping, Section 76-5-301;

116 (iv) child kidnapping, Section 76-5-301.1;

117 (v) aggravated kidnapping, Section 76-5-302;

118 (vi) rape, Section 76-5-402;

119 (vii) rape of a child, Section 76-5-402.1;

120 (viii) object rape, Section 76-5-402.2;

- 121 (ix) object rape of a child, Section 76-5-402.3;
- 122 (x) forcible sodomy, Section 76-5-403;
- 123 (xi) sodomy on a child, Section 76-5-403.1;
- 124 (xii) aggravated sexual abuse of a child, Section 76-5-404.1;
- 125 (xiii) aggravated sexual assault, Section 76-5-405;
- 126 (xiv) aggravated arson, Section 76-6-103;
- 127 (xv) aggravated burglary, Section 76-6-203;
- 128 (xvi) aggravated robbery, Section 76-6-302;
- 129 (xvii) felony discharge of a firearm, Section 76-10-508.1; or
- 130 (xviii) an offense committed in another jurisdiction which if committed in this state
- 131 would be a violation of a crime listed in this Subsection (1)(j);
- 132 (k) the homicide was committed for the purpose of:
- 133 (i) preventing a witness from testifying;
- 134 (ii) preventing a person from providing evidence or participating in any legal
- 135 proceedings or official investigation;
- 136 (iii) retaliating against a person for testifying, providing evidence, or participating in
- 137 any legal proceedings or official investigation; or
- 138 (iv) disrupting or hindering any lawful governmental function or enforcement of laws;
- 139 (l) the victim is or has been a local, state, or federal public official, or a candidate for
- 140 public office, and the homicide is based on, is caused by, or is related to that official position,
- 141 act, capacity, or candidacy;
- 142 (m) the victim is or has been a peace officer, law enforcement officer, executive
- 143 officer, prosecuting officer, jailer, prison official, firefighter, judge or other court official, juror,
- 144 probation officer, or parole officer, and the victim is either on duty or the homicide is based on,
- 145 is caused by, or is related to that official position, and the actor knew, or reasonably should
- 146 have known, that the victim holds or has held that official position;
- 147 (n) the homicide was committed:
- 148 (i) by means of a destructive device, bomb, explosive, incendiary device, or similar
- 149 device which was planted, hidden, or concealed in any place, area, dwelling, building, or
- 150 structure, or was mailed or delivered; or
- 151 (ii) by means of any weapon of mass destruction as defined in Section 76-10-401;

152 (o) the homicide was committed during the act of unlawfully assuming control of any  
153 aircraft, train, or other public conveyance by use of threats or force with intent to obtain any  
154 valuable consideration for the release of the public conveyance or any passenger, crew  
155 member, or any other person aboard, or to direct the route or movement of the public  
156 conveyance or otherwise exert control over the public conveyance;

157 (p) the homicide was committed by means of the administration of a poison or of any  
158 lethal substance or of any substance administered in a lethal amount, dosage, or quantity;

159 (q) the victim was a person held or otherwise detained as a shield, hostage, or for  
160 ransom;

161 (r) the homicide was committed in an especially heinous, atrocious, cruel, or  
162 exceptionally depraved manner, any of which must be demonstrated by physical torture, serious  
163 physical abuse, or serious bodily injury of the victim before death;

164 (s) the actor dismembers, mutilates, or disfigures the victim's body, whether before or  
165 after death, in a manner demonstrating the actor's depravity of mind; or

166 (t) the victim, at the time of the death of the victim:

167 (i) was younger than 14 years of age[-]; and

168 (ii) was not an unborn child.

169 (2) Criminal homicide constitutes aggravated murder if the actor, with reckless  
170 indifference to human life, causes the death of another incident to an act, scheme, course of  
171 conduct, or criminal episode during which the actor is a major participant in the commission or  
172 attempted commission of:

173 (a) child abuse, Subsection 76-5-109(2)(a);

174 (b) child kidnapping, Section 76-5-301.1;

175 (c) rape of a child, Section 76-5-402.1;

176 (d) object rape of a child, Section 76-5-402.3;

177 (e) sodomy on a child, Section 76-5-403.1; or

178 (f) sexual abuse or aggravated sexual abuse of a child, Section 76-5-404.1.

179 (3) (a) If a notice of intent to seek the death penalty has been filed, aggravated murder  
180 is a capital felony.

181 (b) If a notice of intent to seek the death penalty has not been filed, aggravated murder  
182 is a noncapital first degree felony punishable by imprisonment for life without parole or by an

183 indeterminate term of not less than 20 years and which may be for life.

184 (c) (i) Within 60 days after arraignment of the defendant, the prosecutor may file notice  
185 of intent to seek the death penalty. The notice shall be served on the defendant or defense  
186 counsel and filed with the court.

187 (ii) Notice of intent to seek the death penalty may be served and filed more than 60  
188 days after the arraignment upon written stipulation of the parties or upon a finding by the court  
189 of good cause.

190 (d) Without the consent of the prosecutor, the court may not accept a plea of guilty to  
191 noncapital first degree felony aggravated murder during the period in which the prosecutor may  
192 file a notice of intent to seek the death penalty under Subsection (3)(c)(i).

193 (4) (a) It is an affirmative defense to a charge of aggravated murder or attempted  
194 aggravated murder that the defendant caused the death of another or attempted to cause the  
195 death of another under a reasonable belief that the circumstances provided a legal justification  
196 or excuse for the conduct although the conduct was not legally justifiable or excusable under  
197 the existing circumstances.

198 (b) The reasonable belief of the actor under Subsection (4)(a) shall be determined from  
199 the viewpoint of a reasonable person under the then existing circumstances.

200 (c) This affirmative defense reduces charges only as follows:

- 201 (i) aggravated murder to murder; and
- 202 (ii) attempted aggravated murder to attempted murder.

203 (5) (a) Any aggravating circumstance described in Subsection (1) or (2) that constitutes  
204 a separate offense does not merge with the crime of aggravated murder.

205 (b) A person who is convicted of aggravated murder, based on an aggravating  
206 circumstance described in Subsection (1) or (2) that constitutes a separate offense, may also be  
207 convicted of, and punished for, the separate offense.

208 Section 3. Section **76-7-301** is amended to read:

209 **76-7-301. Definitions.**

210 As used in this part:

211 (1) (a) "Abortion" means:

212 (i) the intentional termination or attempted termination of human pregnancy after  
213 implantation of a fertilized ovum~~[, and includes any and all procedures undertaken to kill a live~~

214 ~~unborn child and includes all procedures undertaken to produce a miscarriage.]~~ through a  
215 medical procedure carried out by a physician or through a substance used under the direction of  
216 a physician;

217 (ii) the intentional killing or attempted killing of a live unborn child through a medical  
218 procedure carried out by a physician or through a substance used under the direction of a  
219 physician; or

220 (iii) the intentional causing or attempted causing of a miscarriage through a medical  
221 procedure carried out by a physician or through a substance used under the direction of a  
222 physician.

223 (b) "Abortion" does not include:

224 (i) removal of a dead unborn child[-];

225 (ii) removal of an ectopic pregnancy; or

226 (iii) the killing or attempted killing of an unborn child without the consent of the  
227 pregnant woman, unless:

228 (A) the killing or attempted killing is done through a medical procedure carried out by  
229 a physician or through a substance used under the direction of a physician; and

230 (B) the physician is unable to obtain the consent due to a medical emergency.

231 (2) "Medical emergency" means that condition which, on the basis of the physician's  
232 good faith clinical judgment, so threatens the life of a pregnant woman as to necessitate the  
233 immediate abortion of her pregnancy to avert her death, or for which a delay will create serious  
234 risk of substantial and irreversible impairment of major bodily function.

235 (3) (a) "Partial birth abortion" means an abortion in which the person performing the  
236 abortion:

237 (i) deliberately and intentionally vaginally delivers a living fetus until, in the case of a  
238 head first presentation, the entire fetal head is outside the body of the mother, or, in the case of  
239 breech presentation, any part of the fetal trunk past the navel is outside the body of the mother,  
240 for the purpose of performing an overt act that the person knows will kill the partially delivered  
241 living fetus; and

242 (ii) performs the overt act, other than completion of delivery, that kills the partially  
243 living fetus.

244 (b) "Partial birth abortion" does not include the dilation and evacuation procedure

245 involving dismemberment prior to removal, the suction curettage procedure, or the suction  
246 aspiration procedure for abortion.

247 (4) "Physician" means:

248 (a) a medical doctor licensed to practice medicine and surgery under Title 58, Chapter  
249 67, Utah Medical Practice Act~~[, a physician in the employment of the government of the~~  
250 ~~United States who is similarly qualified, or];~~

251 (b) an osteopathic physician licensed to practice osteopathic medicine under Title 58,  
252 Chapter 68, Utah Osteopathic Medical Practice Act~~[-];~~ or

253 (c) a physician employed by the federal government who has qualifications similar to a  
254 person described in Subsection (4)(a) or (b).

255 (5) "Hospital" means:

256 (a) a general hospital licensed by the Department of Health according to Title 26,  
257 Chapter 21, Health Care Facility Licensing and Inspection Act~~[-, and includes];~~ and

258 (b) a clinic or other medical facility to the extent that such clinic or other medical  
259 facility [provides] is certified by the Department of Health as providing equipment and  
260 personnel sufficient in quantity and quality to provide the same degree of safety to the pregnant  
261 woman and the unborn child as would be provided for the particular medical procedures  
262 undertaken by a general hospital licensed by the Department of Health. [It shall be the  
263 responsibility of the Department of Health to determine if such clinic or other medical facility  
264 so qualifies and to so certify.]

265 Section 4. Section **76-7-301.5** is enacted to read:

266 **76-7-301.5. Relationship to criminal homicide.**

267 (1) This part does not apply to the killing or attempted killing of a live unborn child in  
268 any manner that is not an abortion.

269 (2) The killing or attempted killing of a live unborn child in a manner that is not an  
270 abortion shall be punished as provided in Title 76, Chapter 5, Part 2, Criminal Homicide.

271 Section 5. Section **76-7-302** is amended to read:

272 **76-7-302. Circumstances under which abortion authorized.**

273 (1) As used in this section, "viable" means that the unborn child has reached a stage of  
274 fetal development when the unborn child is potentially able to live outside the womb, as  
275 determined by the attending physician to a reasonable degree of medical certainty.

276 (2) An abortion may be performed in this state only by a physician [~~licensed to practice~~  
277 ~~medicine under Title 58, Chapter 67, Utah Medical Practice Act or an osteopathic physician~~  
278 ~~licensed to practice medicine under Title 58, Chapter 68, Utah Osteopathic Medical Practice~~  
279 ~~Act~~].

280 (3) An abortion may be performed in this state only under the following circumstances:

281 (a) the unborn child is not viable; or

282 (b) the unborn child is viable, if:

283 (i) the abortion is necessary to avert:

284 (A) the death of the woman on whom the abortion is performed; or

285 (B) a serious risk of substantial and irreversible impairment of a major bodily function  
286 of the woman on whom the abortion is performed;

287 (ii) two physicians who practice maternal fetal medicine concur, in writing, in the  
288 patient's medical record that the fetus has a defect that is uniformly diagnosable and uniformly  
289 lethal; or

290 (iii) (A) the woman is pregnant as a result of:

291 (I) rape, as described in Section 76-5-402;

292 (II) rape of a child, as described in Section 76-5-402.1; or

293 (III) incest, as described in Subsection 76-5-406(10) or Section 76-7-102; and

294 (B) before the abortion is performed, the physician who performs the abortion:

295 (I) verifies that the incident described in Subsection (3)(b)(iii)(A) has been reported to  
296 law enforcement; and

297 (II) complies with the requirements of Section 62A-4a-403.

298 [~~(4) Notwithstanding any other provision of this section, a woman who seeks to have,~~  
299 ~~or obtains, an abortion for herself is not criminally liable.]~~

300 Section 6. Section **76-7-314** is amended to read:

301 **76-7-314. Violations of abortion laws -- Classifications.**

302 [~~(1) Notwithstanding any other provision of law, a woman who seeks to have or~~  
303 ~~obtains an abortion for herself is not criminally liable.]~~

304 [~~(2) A woman upon whom a partial birth abortion is performed may not be prosecuted~~  
305 ~~under Section 76-7-326 or 76-7-329 for a conspiracy to violate Section 76-7-326 or 76-7-329.]~~

306 [~~(3)~~] (1) A willful violation of Section 76-7-307, 76-7-308, 76-7-310, 76-7-310.5,

307 76-7-311, or 76-7-312 is a felony of the third degree.

308 ~~[(4)]~~ (2) A violation of Section 76-7-326 ~~[or 76-7-329]~~ is a felony of the third degree.

309 ~~[(5)]~~ (3) A violation of Section 76-7-314.5 is a felony of the second degree.

310 ~~[(6)]~~ (4) A violation of any other provision of this part is a class A misdemeanor.

311 Section 7. Section **76-7-314.5** is amended to read:

312 **76-7-314.5. Killing an unborn child.**

313 (1) A person is guilty of killing an unborn child if the person causes the death of an  
314 unborn child by performing an abortion of the unborn child in violation of the provisions of  
315 Subsection 76-7-302(3).

316 ~~[(2) Notwithstanding any other provision of this section, a woman who seeks to have,  
317 or obtains, an abortion for herself is not criminally liable.]~~

318 (2) A woman is not criminally liable for:

319 (a) seeking to obtain, or obtaining, an abortion that is permitted by this part; or

320 (b) a physician's failure to comply with Subsection 76-7-302(3)(b)(ii) or Section  
321 76-7-305.

322 Section 8. Section **76-7-327** is amended to read:

323 **76-7-327. Remedies for father or maternal grandparents.**

324 (1) The father, if married to the mother at the time she receives a partial birth abortion,  
325 and if the mother has not attained the age of 18 years at the time of the abortion, the maternal  
326 grandparents of the fetus, may in a civil action obtain appropriate relief, unless the pregnancy  
327 resulted from the plaintiff's criminal conduct or the plaintiff consented to the abortion.

328 (2) Such relief shall include:

329 (a) money damages for all injuries, psychological and physical, occasioned by the  
330 violation of Section 76-7-326 ~~[or 76-7-329]~~; and

331 (b) statutory damages equal to three times the cost of the partial birth abortion.

332 Section 9. **Repealer.**

333 This bill repeals:

334 Section **76-7-329, Person unauthorized to perform abortions -- Penalties.**

335 Section 10. **Effective date.**

336 If approved by two-thirds of all the members elected to each house, this bill takes effect  
337 upon approval by the governor, or the day following the constitutional time limit of Utah

338 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,  
339 the date of veto override.

340 Section 11. **Coordinating H.B. 462 with H.B. 12 -- Superceding amendments.**

341 If this H.B. 462 and H.B. 12, Criminal Homicide and Abortion Amendments, both pass,  
342 it is the intent of the Legislature that H.B. 462 supersedes H.B. 12, and that the Office of  
343 Legislative Research and General Counsel prepare the Utah Code database for publication to  
344 reflect that H.B. 462 supersedes H.B. 12.

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**Legislative Review Note**  
**as of 3-4-10 11:28 AM**

**Office of Legislative Research and General Counsel**

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**H.B. 462 - Criminal Homicide and Abortion Revisions**

**Fiscal Note**

2010 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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